

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/140 /2007-SM[BR]

Date 04/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR.
C.C.E. KANPUR

Appellant
Vs
Respondent

M/S VINAYAK ULTRAFLEX PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 1283 /2008 -SM[BR]** dated 20.8.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

M/S VINAYAK ULTRAFLEX PVT. LTD.

37 - 39, UPTRON ESTATE, PANKI, KANPUR.

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.

N / V; -----

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15

15. Office Copy

16. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Excise Appeal No. 140 of 2007-SM

[Arising out of Order-in-Appeal No. 538-CE/APPL/KNP/06 dated 19.10.06
passed by the Commissioner (Appeals), Kanpur.]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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- | | | |
|--|---|------|
| 1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982? | : | } m. |
| 2. Whether it should be released under Rule 27 :
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not? | : | |
| 3. Whether Their Lordships wish to see the fair :
copy of the Order? | : | |
| 4. Whether Order is to be circulated to the :
Departmental authorities? | : | yes |
-

Commissioner of Central Excise
Kanpur

Appellant

Vs.

M/s. Vinayak Ultraflex Pvt.Ltd.

Respondent

Appearance: Mr. Sansar Chand Gautam, DR for the Appellant
Mr. Rajesh Chhibber, Advocate for the Respondent

Date of decision : 20.8.2008

final ORDER NO. 1283/2008

Per P.K.Das (for the Bench):

The Revenue filed this appeal against the order of the Commissioner (Appeals) for enhancement of penalty under Section 11AC of the Central Excise Act, 1944.

2. After hearing both the sides and on perusal of the records, it is seen that the Central Excise officers conducted stock verification at the respondents factory and detected shortage of finished goods and raw materials. The respondents immediately deposited the duty on the shortage. The adjudicating authority confirmed the demand of duty of Rs.2,05,074/- and appropriated the said amount as already deposited by them. He also imposed penalty of Rs.12,000/- under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. Revenue filed the appeal before the Commissioner (Appeals) for imposition of penalty of equal amount of duty under Section 11AC of the Act which has been rejected. Hence the Revenue filed this appeal.

3. The learned DR drew the attention of the Bench to the show cause notice where Shri Avinash Modi, authorised signatory admitted the shortage in his statement dated 25.7.05 and agreed to pay the duty and also stated that it appears that in his absence the factory employees cleared the goods without issuing any central excise notice and without entry in the central excise records.

4. The learned advocate on behalf of the respondents submits that authorised signatory raised the presumption which cannot be treated as clandestine removal of the goods. He further submits that there is no

evidence of clandestine removal of the goods and therefore, section 11AC cannot be invoked.

5. I find that authorised signatory admitted in his statement that employees cleared the goods without payment of duty, and therefore, it is a case of clandestine removal of the goods. Hence, the imposition of penalty under Section 11AC of the Act is warranted. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise vs. Malbro Appliances P.Ltd. [2007 (208) ELT 503 (Del)] held that first proviso to section 11AC (1) of the Act provided for penalty of 25% if duty demanded is paid within 30 days of the order. In the present case, the respondent deposited the duty before issue of show cause notice and therefore, penalty is imposable 25% of duty (i.e. Rs,50,000.00 approximately). Accordingly, the penalty is enhanced from Rs. 12,000/- to Rs. 50,000/- (Rupees Fifty thousands only).

6. The Revenue's appeal is disposed of in the above terms.

(Pronounced in the open Court)

(P.K. Dās)
Member(Judicial)